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MAILED

SEP 13 2004

**DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600**

In re Application of
Kenneth Gerald Dextras
Application No. 09/976,563
Filed: October 15, 2001
For: BUILDING WALL HUMIDITY CONTROL SYSTEM

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO) on August 25, 2004.

The petition is **DISMISSED**.

A review of the file records reveals that the application was held abandoned for failure to timely file a reply to the Notice of Non-Compliant Amendment mailed December 24, 2003. This letter was mailed in response to the amendment filed December 2, 2003.

Applicant states that the Notice mailed December 24, 2003 was not received.

There is a strong presumption that mail properly addressed and delivered to the United States Postal Service was in fact delivered to the addressee. An allegation that an Office communication was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. However, the presumption that the Office communication was delivered to applicant may be overcome by a showing that the communication was not, in fact, received as indicated below.

Applicant's (in this case the inventor, Mr. Kenneth Dextras) statements of non-receipt should include a statement by him, and by anyone else at applicant's correspondence address, who would have handled the Office communication, and include any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question. Copies of records on which the receipt date of the Office communication would have been entered had it been received, (e.g., a copy of the outside of the file maintained by applicant), are required if available. Also, a showing of any docket records or other method which would serve as a reminder of a response due date should be submitted. Whatever method applicant uses as a reminder, and submits in response to this decision should be adequately explained. Also, a statement is required that a search of the file maintained by applicant, or any other location where correspondence from the USPTO is kept, failed to find a copy of the Office

communication in question. Finally, applicant must state that he was in fact at the correspondence address of record at the time the Office action would have been received.

Any such exhibits should be submitted as part of statement(s) showing that no Office communication was ever received.

Regarding applicant's request to correspond by email, it is noted that all business with the Patent and Trademark Office should be transacted in writing. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt (see 37 CFR 1.2).

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and should be mailed to the Commissioner for Patents, P.O. Box 1450, Technology Center 3600, Alexandria, VA 22313-1450.



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SNM/vdb: 9/9/04